IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIGINAL SIDE

APPEAL NO.552 OF 2004
IN
CHAMBER SUMMONS NO. 175 OF 2004
IN
EXECUTION APPLICATION NO.587 OF 2003
IN
SUIT NO.2853 OF 1976

1. M.R. & D.R. Thacker & Anr. Appellants
vs.
1. Ramakumar Daga of Mumbai & anr. Respondents

Mr.Mahendra Ghelani i/b. M/s.Law Charter for the appellants.

Mr.Shailesh Shah i/b. M/s.M. Hiralal & Co. for the respondents.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ

DATED : 7th September 2004

P.C.

Heard.

2. Admit.

3. M/s.M.Hiralal & Co., advocate on record for the respondents waives service.

4. Looking to the controversy involved in the appeal, we are satisfied that the appeal deserves to be heard at this stage itself. Hence we dispense with paper books

and treat the appeal on board for hearing.

5. Bereft of unnecessary details, the few and essential facts for disposal of the appeal may be noticed by us first. The present respondents filed the suit for the specific performance of the agreement dated 30th September 1986 and supplemental agreement dated 26th November 1991 against the present appellants. The said suit is said to have been settled on the basis of the consent terms signed by the plaintiffs and the defendant nos. 1 and 3 on 5th February 1987. The defendant no.2 was dropped from the suit. On the basis thereof on 24th June 1997 decree came to be passed. It appears that further agreements between the parties took place and on 23rd March 1998 and based upon the further agreements, the supplemental decree came to be passed. On 23rd January 2001 further supplemental consent terms were taken on record and a supplemental consent decree in terms thereof was passed on 23rd January 2001. On 28th January 2004 the respondent no.3 had levied execution of the decree. Chamber summons was taken out by the decree holder that notice to the judgment debtors under Order 21 Rule 22 of the Code of Civil Procedure be dispensed with and that the judgment debtors be directed to disclose their assets as per Order 21 Rule 41. Few other reliefs were also prayed for in the said chamber summons. The chamber summons was opposed by the

judgment debtors. The learned Chamber Judge granted the chamber summons in terms of prayers (a) and (d) i.e., the learned Chamber Judge dispensed with the notice to the judgment debtors under Order 21 Rule 22 of the Code of Civil Procedure and the judgment debtors were directed to disclose their assets as per Order 21 Rule 41. It is this order which is impugned in the present appeal.

6. The thrust of the reason given by the learned Chamber Judge in his order is that execution application was filed after two years from the date of the consent decree dated 26th January 2001 and the dispensation of notice as per Order 21 Rule 22 was necessary. We are afraid, the said reasoning cannot stand scrutiny under Order 21 Rule 22. Order 21 Rule 22 provides notice to be given to the judgment debtor where an application for execution is made more than two years after the date of the decree. Sub-rule (2) of Rule 22 of Order 21 reserves the power of the Court in dispensing with the show cause notice for the reasons to be recorded in writing if the Court considers that the issue of such notice would cause unreasonable delay or defeat the ends of justice. Such notice that is mandatory under Rule 22 of Order 21 cannot be dispensed with merely because the execution application is filed after two years. It is other way round. If the execution application is filed

after two years from the date of the decree, the dispensation of notice can only be in circumstances set out in sub-rule (2) of Rule 22 and not as a rule.

7. The other observation of the learned chamber Judge that further delay would defeat the whole purpose of the consent decree in question is inconsistent with the observation made in the order giving liberty to the defendants to agitate and raise pleas as may be available in their defences by appropriate application or steps or affidavits, if permissible under the law. Moreover the learned chamber Judge has not set out the facts and circumstances on the basis of which he formed the opinion that delay would defeat the whole purpose of the consent decree.

8. In our considered view, the whole approach of the learned chamber Judge in dealing with the application under Order 21 Rule 22, particularly prayers (a) and (d) suffers from infirmities in law and requires reconsideration.

9. We, accordingly, allow the appeal and set aside the order dated 6th May 2004 to the extent prayers (a) and (d) of the chamber summons has been granted. Chamber summons no.175/2004 in Execution Application (Lodging) No.587/2003 in Suit No.2853/1996 is restored to the

extent of prayers (a) and (d) for fresh consideration by the learned chamber Judge in accordance with law.

10. No costs.

(R.M. LODHA, J.)

(J.P. DEVADHAR,J.)